

Senate Bill 598 (Hill)

Date: 02/27/15

Program: Sales and Use Tax

Sponsor: La Honda Fire Brigade

Revenue and Taxation Code Section 6018.10

Effective immediately but operative first quarter more than 90 days after enactment

Michele Pielsticker (Chief) 916.322.2376

Sheila Waters (Analyst) 916.445.6579

Ronil Dwarka (Revenue) 916.445.0840

Summary: Specifies that all-volunteer fire departments (VFDs) are consumers, rather than retailers, of tangible personal property they sell when the profits are used to further the VFD's purposes.

Purpose: To allow VFDs to better utilize scarce resources by exempting from sales tax their fund-raising sales, such as hot prepared food products and clothing, and instead requiring them to pay tax on the purchase price of any taxable items they buy for resale in their fund-raising activities. VFDs rely primarily on membership drives and fundraising activities to support their operational budgets.

Fiscal Impact Summary: Annual state and local sales and use tax revenue loss of \$42,000.

Existing Law: Except where specifically exempted by statute, California's Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption of tangible personal property purchased from a retailer. The law does not generally exempt from sales or use tax sales or purchases by nonprofit organizations, persons engaged in charitable activities, or those who enjoy certain income tax or property tax privileges. Therefore, nonprofit organizations' tangible personal property sales generally are subject to tax to the same extent as any other retailer's sales.

Generally, persons engaged in the business of selling tangible personal property must obtain a seller's permit. These persons must also report the tax on a Board of Equalization (BOE)-prescribed return. However, various statutes regard some small or service-based businesses and certain nonprofit organizations as statutory consumers. The law does not consider a statutory consumer's qualifying sales to be retail sales. Therefore statutory consumers need not report or pay tax on their sales or obtain a seller's permit, unless they make other non-qualifying retail sales. Instead, statutory consumers generally owe tax on their purchases of taxable products they intend to sell.

The statutory consumer concept is primarily intended to minimize certain businesses' and organizations' reporting burdens. It also minimizes the associated revenue loss that accompanies a complete tax exemption. Other statutory consumers classified in law include, PTAs, nonprofit veterans' organizations, nonprofit youth organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, and licensed hearing aid dispensers, among others.

Proposed Law: This bill specifies that an "all volunteer fire department" is a consumer, and shall not be considered a retailer, of tangible personal property sold by it if the profits are used solely and exclusively to further the VFD's purposes.

The bill defines "all volunteer fire department" as an organization that meets these requirements:

- All members shall not be paid a regular salary, but may be compensated hourly or on a per incident basis.
- The organization's purpose is to protect the lives, property and environment, as specified.
- The organization is regularly organized for VFD purposes and qualifies as an exempt organization, as specified.

¹ Part 1, Division 2 (commencing with Section 6001) of the Revenue and Taxation Code (RTC).

The bill becomes effective immediately, however, the provisions become operative on the first day of the first calendar quarter commencing more than 90 days after the bill is enacted.

Commentary:

- 1. Effect of the bill.** VFDs that make sales of taxable food, clothing, or other tangible personal property will not be required to report sales tax on those sales, hold a BOE-issued seller's permit, or file sales tax returns. Instead, they will only be required to pay tax reimbursement on the cost of the taxable items they intend to sell for fund-raising purposes.
- 2. This bill does not materially impact the BOE's tax audit or administrative functions.** According to the author's office, about 250 VFDs exist in California. However, generally, the BOE seldom audits VFDs due to their low sales volume and lack of complexity.

Administrative Costs: The BOE would incur some minor absorbable costs related to notification, regulation changes, and publication updates.

Revenue Impact:

Background, Methodology, and Assumptions. VFDs derive funds to support their organizations from a variety of sources including donations and grants that would not be impacted by this bill. Also, some fund-raising efforts do not involve sales of tangible personal property, such as admissions to dances, balls and other events, and hall rentals, and would not be impacted by this measure. Other VFD fund-raising efforts that this bill would impact include pancake breakfast sales, community dinners, and summer barbecues. Under this measure, any taxable tangible personal property a VFD purchases for subsequent sale in its fundraising efforts would be subject to tax based on the VFD's purchase price. Such purchases include, as an example, carbonated beverages, alcohol, and eating utensils.

In California, there are approximately 250 VFDs. Data that shows the receipts derived from these organizations' tangible personal property sales that this bill would exempt is unavailable. However, assuming on average, each VFD's annual sales impacted by this measure, minus the costs of taxable purchases, amounts to \$2,000, then the total receipts impacted by this measure would amount to \$500,000 annually ($250 \text{ VFDs} \times \$2,000 = \$500,000$).

Revenue Summary. Providing a sales and use tax exemption to VFD's for fundraising activities will result in estimated annual sales and use tax loss of \$42,000 ($\$500,000 \text{ receipts} \times 8.42\% \text{ statewide rate} = \$42,000$).

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.